

REMARKS

This responds to the Office Action mailed on November 15, 2006. Claims 16-36 have been canceled. Claims 37-42 have been added. These newly added claims are fully supported by the specification and no new matter is presented by these claims. In addition, the Applicants have carefully reviewed the art of record and believe that the newly added claims are patentable in view of the cited art. Applicants respectfully request reconsideration of the application in view of the above amendments and the following remarks in support thereof.

§103 Rejection of the Claims

Claims 1-15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,478,990 to Montanari et al. (hereinafter "Montanari") in view of U.S. Patent No. 6,119,531 to Wendte et al. (hereinafter "Wendte") and U.S. Patent No. 5,285,383 to Lindsey et al. (hereinafter "Lindsey") with official notice. As will be fully explained below, the combination of Montanari in view of Wendte and Lindsey do not raise a prima facie case of obviousness against independent claim 1.

In support of the 35 U.S.C. §103(a) rejections, the Office Action asserts that Wendte discloses "communicating the report to the user responsive to the request for real-time agricultural product information," as recited in independent claim 1. Applicants disagree with the Office Action's characterization of Wendte relative to independent claim 1 because portions of Wendte relied upon by the Office Action (col. 8, line 42) do not disclose "communicating the report to the user responsive to the request for real-time agricultural product information," as recited in independent claim 1. In particular, Wendte discloses "yield and/or moisture content of grain are being measured and recorded substantially in real time during harvesting" (col. 8, lines 39-42). Instead of recording the content of grain in real time, independent claim 1 recites "communicating the report to the user responsive for real-time agricultural product information." As Wendte merely discloses the recording of content of grain in real time, Wendte cannot reasonably be considered to disclose, to one having ordinary skill in the art, "communicating the report to the user responsive to the request for real-time agricultural product information," as recited in independent claim 1.

Furthermore, in support of the 35 U.S.C. §103(a) rejection of independent claim 1, the Office Action takes official notice “of the practice of the intermediate handler of a product e.g. the distributor and or retailer having request access to information about the product chain of title and information appurtenant to the product collected along the chain” (see Office Action mailed November 15, 2006 at page 3). Additionally, in support of the 35 U.S.C. §103(a) rejections of claims 3, 4, and 10, the Office Action takes official notice “with respect to the remaining elements i.e., Internet, WAN, LAN and cellular, which are deemed old and notorious channels of communicating data” (see Office Action mailed November 15, 2006 at page 3). The Applicants respectfully traverse the Office Action's assertions of official notices and request the Examiner to provide documentary evidence or affidavit in support of such assertions, as required by MPEP § 2144.03.

To establish a *prima facie* case of obviousness, the prior art references must disclose or suggest all the claim features. Here, in view of the incorrect characterization of Wendte, the references as combined do not disclose all the features of the claimed invention. Accordingly, the Applicants submit that independent claim 1 is patentable under 35 U.S.C. §103(a) over Montanari in view of Wendte and Lindsey. Claims 2-15, each of which depends from independent claim 1, are likewise patentable under 35 U.S.C. §103(a) over Montanari in view of Wendte and Lindsey for at least the same reasons set forth above regarding independent claim 1. Accordingly, the obviousness rejections of pending claims 1-15 are improper and should be withdrawn.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at 408-278-4047 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Reservation of Rights

In the interest of clarity and brevity, Applicants may not have addressed every assertion made in the Office Action. Applicants silence regarding any such assertion does not constitute any admission or acquiescence. Applicants reserve all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicants do not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicants timely object to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicants reserve all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoiner of any withdrawn claim, as required by MPEP § 821.04.

Respectfully submitted,

JEFF DLOTT ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

P.O. Box 2938
Minneapolis, MN 55402
408-278-4047

Date 5/14/2007

By


Michael Hsu

Reg. No. 46,782

CERTIFICATE UNDER 37 CFR § 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 14th, day of May 2007.

Name: Dawn R. Shaw

Signature:

